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Human Rights, Religion and the Rule of Law: A Response

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ABSTRACT

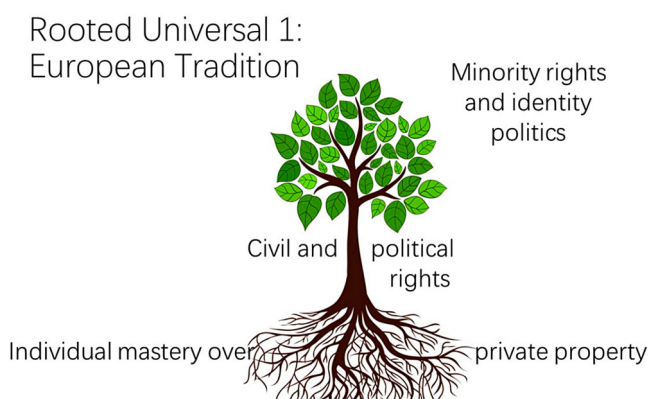
The articles gathered here provide a range of approaches, but there are some topics that should be added to the discussion to provide a fuller picture. These topics include: a Chinese Marxist approach to human rights; socialist rule of law, which frames the revised (2018) regulation on religion; the largest Protestant church organization in the world, the Three-Self Patriotic Movement; and the 2018 Chinese-Vatican agreement. The following is predicated on the need for engagement with the full picture, upon which assessment should be based.



KEYWORDS

Chinese Marxism; socialist human rights; freedom of religion; socialist rule of law

The Chinese Marxist tradition of human rights

The first matter concerns human rights. Since full comparison between the Western European liberal and Chinese Marxist traditions is beyond my remit, I focus on the latter. We may summarize the former tradition as based on the precept – developed since the twelfth century – that a right can work only if one has power to enact it.¹ Given the close association between *ius* (right) and *dominium* (power over private property and thus commodities), human rights came to be understood as mastery of individual speech, political expression, religious belief and so on – now known as civil and political rights.² The following diagram illustrates:



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¹Tierney, *Idea of Natural Rights*.

²A full explication of this history is provided elsewhere: Boer, "Sovereignty and Human Rights."

The problem with this tradition is that it has for some come to define “human rights” – which is a false universal, in which one neglects the specific conditions of emergence, with its possibilities and limitations, and asserts that it is absolute and applicable to all situations.³ This perception of human rights appears in the articles by Lap Yan Kung, and Hu Jieren and Zheng Yang, although a more nuanced approach – albeit from within the tradition – may be found in the piece by Lovin.

More significant here is the Chinese Marxist tradition.⁴ It begins with the prerequisite of state sovereignty.⁵ By sovereignty is meant not a Westphalian definition – which applied to European states but not those they colonized – but an anti-colonial one. As the United Nations *Declaration on the Granting of Independence to Colonial Countries and Peoples* (1960) made clear, sovereignty itself is a right, human rights can take place only in the context of the “self-determination of all peoples,” and territorial integrity is an escapable feature. This does not mean that human rights are granted by a state, but that anti-colonial sovereignty – as a right – is the foundation for any other rights.⁶ Nor does it mean that sovereignty is determinative of other rights, for “human rights are the most essential and at the highest level.”⁷

The next step is to identify the core human right: the right to economic wellbeing for all (*shengcun quan*), which includes the rights to development and work.⁸ This emphasis draws from Marxist and Chinese sources. From Marxism⁹ – the point where Xie Zhibin’s otherwise insightful study falls short – comes the focus on forces and relations of production, and one may trace its influence from Marx and Engels, the development of a unique tradition in the Soviet Union and then its sinification (*Zhongguohua*),¹⁰ particularly since the beginning of the reform and opening up with its liberation of the forces of production.¹¹

In the longer tradition, the Confucian ethos also plays a role, not merely in terms of the *Book of Rites*’ phrase “all under heaven is as common (*tianxia wei gong*),” but also with the desire for at least a *xiaokang* society – moderately well-off, healthy and peaceful in all respects.¹² This term – *xiaokang* – has been reinterpreted in a Marxist framework to become the major Chinese project.¹³ At this intersection between Confucianism and

³By using the terminology of “false universal,” which may be contrasted with a “rooted universal,” I do not deploy the European relative-absolute distinction. See further, Sun, *Human Rights Protection System*, 132–35.

⁴Chinese scholarship on human rights is immense, with human rights centres, nationally funded research projects, policy directives, and journals devoted to the topic. The best English language study is by Sun, *Human Rights Protection System*; even better is the Chinese language study by Wan “Zhongguo tese renquan guan.”

⁵Li and Wang, “Renquan guoji baohu,” Wan, “Zhongguo tese renquan guan,” 42; and Jiang, “Makesizhuyi renquan guan,” 36.

⁶Li et al., “Zhongguo tese shehuizhuyi renquan,” 65.

⁷Sun, *Human Rights Protection System*, 121.

⁸Lin, “Pubian renquan de jeigou,” 76–8; Wan, “Zhongguo tese renquan guan,” 42–3; Jiang, “Makesizhuyi renquan guan,” 37–8; Li, “Goujian renlei mingyun gongtongti,” 3–5; and Wu, “Lun xin shidai,” 13–4. Further, economic and social rights are not seen as “second generation” human rights, with civil and political rights as the “first generation,” for the idea of these generations indicates the European tradition: Vasak, “Human Rights.”

⁹This dimension is often ignored or downplayed by foreign scholars: Angle, *Chinese Thought*, 200–4, 240–49; Bell, *East Meets West*, 49–105; Biddulph, *Stability Imperative*; and Freeman and Geeraerts, “Europe, China and Expectations,” 100.

¹⁰Weatherley, *Discourse of Human Rights*, 97–98; Lin, “Pubian renquan de jeigou,” 75–76.

¹¹Wang and Cui, “Gaige kaifang 40 nian.”

¹²For a careful assessment of the tradition’s full impact – negative and positive – see Wan, “Zhongguo tese renquan guan,” 46–48.

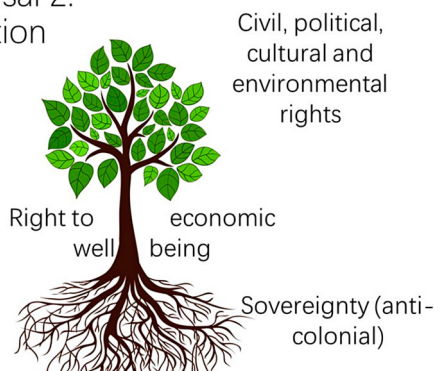
¹³Deng Xiaoping, in 1979, was the first communist leader to pick up the idea of *xiaokang*, drawing on a tradition dating back to the *Book of Rites* and *Book of Songs*. Deng, “Zhongguo ben shiji.” See further: Boer, “Seeking a Xiaokang Society”; Wu, “Lun xin shidai”; and Xi, *Secure a Decisive Victory*.

Marxism, the main human right has become the right to socio-economic wellbeing.¹⁴ It remains the underlying drive of many programs, albeit not without recognized and significant problems in implementation: the socialist market economy, which focuses on liberating the forces of production for the sake of “serving the community (*gongtongti fuwu*)”;¹⁵ the comprehensive minority nationalities policy, with relevance for Tibet and Xinjiang;¹⁶ the long-term poverty alleviation program that has raised 750–850 million people out of poverty;¹⁷ the development of a socialist rule of law (see below); socialist democracy;¹⁸ and the international policy of a “community with a shared future for humankind.”¹⁹ It is also the driving force of disability welfare rights, the focus of Xu Shuang’s article in this special issue. The paradox is that just as China is developing a full socialist welfare system, former capitalist bastions of the “welfare state” – most notably Scandinavia – are dismantling them.

This emphasis has become a rooted universal, acknowledged and ratified by most countries, in the United Nations’ *International Covenant on Economic, Social, and Cultural Rights* (1976) and *Declaration on the Right to Development* (1986). While the second recognizes the “inalienable right” to development, the first mentions that state parties “recognize the rights of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions.”

For the sake of comparison, let us use another diagram:

Rooted Universal 2: Chinese Tradition



At the roots is anti-colonial sovereignty, with the right to socio-economic wellbeing as the trunk. Thus, the fruit becomes civil, political, cultural and environmental rights, especially in light of the two centenary goals and core socialist values.²⁰

¹⁴This emphasis should not be misunderstood as a collective focus (as Xie Zhibin suggests), in response to the European liberal tradition’s emphasis on the individual. Instead, it entails a recalibration of the collective-individual relation. See Li et al., “Zhongguo tese shehuizhuyi renquan,” 57, 60, 66–68.

¹⁵Huang, “Shehuizhuyi shichang jingji lilun.”

¹⁶Boer, “State and Minority Nationalities.”

¹⁷Kun, *Poverty Alleviation in China*; World Bank, *China Systematic Country Diagnostic*, 1. The World Bank report observes that this “unprecedented” result means that 7 in 10 of those throughout the world who have been lifted out of poverty are in China.

¹⁸Guo and Zhao, “Xin shidai zhongguo tese.”

¹⁹Li, “Goujian renlei mingyun gongtongti,” 1–3; Wu, “Lun xin shidai,” 18.

²⁰Wu, “Lun xin shidai,” 14–15.

The clear differences between the two traditions have led at times to tit-for-tat exchanges,²¹ yet these mutual “East–West” recriminations are not helpful. Far better to understand each other’s traditions, avoid asserting one tradition as a (false) universal, and explore multiple contributions to a genuine and rooted universal. Indeed, more recent Chinese scholarship and policy directives urge all countries to ratify and act on both of the UN’s covenants, on economic, social and cultural rights and on civil and political rights.²² If this happens, we may be able to move towards a globally recognized universal with distinct emphases depending on specific conditions.

Socialist rule of law and the question of religion

Let us turn to the question of religion: in a small number of countries (most of them former colonizers) somewhat sensational and misinformed accounts have appeared of a new wave of religious repression in China, targeted at Christianity and certain forms of Islam (the Uyghur in Xinjiang). At times, this development is placed in a larger context of censorship, repression and control since Xi Jinping became chairman and president. These depictions risk distortion, since they do not seek out the core issue.²³

The answer lies in consistent, uniform and countrywide application of socialist rule of law. This development is complex, but may be summarized as follows.²⁴ On 11 March 2018, the annual National People’s Congress amended the preamble to the Constitution, from “improve the socialist legal system” to “improve the socialist rule of law.” The change was only in the final character of the phrase, from 制 to 治 – although they have exactly the same pronunciation: *zhì*. Significantly, there is no inherent opposition between “legal system (*fazhi*)” and “rule of law (*fazhi*)”: the former designates the legal system as one among others, such as economic, political and cultural systems; the latter indicates that law is foundational to all the other systems.

Why the shift? The reason lies in the opposition between “rule of law (*fazhi*)” and “rule of human beings (*renzhi*).” From the late 1970s to the 1990s, debate over this tension led to a clear preference for rule of law, since “rule of human beings” recalled the “evil fruit (*eguo*)” of the Cultural Revolution and the unwitting evocation of the sage-king whose virtue was key. In light of this debate, “rule of human beings” came to influence the understanding of “legal system,” which at times bore the sense of “rule by law.” More specifically, the existence of a legal system was not enough to prevent “rule by human beings.” Thus, from 1997, we find the promotion of rule of law, or literally a “socialist rule of law country (*shehuizhuyi fazhi guo*),” which entered the Constitution in 1999.

The test of all this is in practice, where the key phrase is “governing the country according to law (*yifazhiguo*),” particularly “in all respects” or “in an all-round way (*quanmian*).” As Xi Jinping puts it in his report to the CPC nineteenth congress: “We must promote the

²¹Human Rights Watch, *World Report 2018*; Amnesty International, *Amnesty International Report 2017/18*; and State Council, *United States in 2017*.

²²Initially conceived as one document, the covenants were divided into two. Although published separately, both came into effect in 1976. See further, Sun, *Human Rights Protection System*; Li et al., “Zhongguo tese shehuizhuyi renquan,” 68–9.

²³It is not due to a “paranoid” and “secretive” CPC, “afraid” of its own people, especially in light of global survey results which indicate between 84 and 92 percent trust by Chinese people in government and public institutions, and confidence in the direction China is taking. See Ipsos, *What Worries the World*; Edelman, *Edelman Trust Barometer*.

²⁴An interested reader should consult at least two recent and comprehensive treatments: Chen and Li, “Zhongguo fazhi lilun”; and He and Qi, “Fazhi chengwei fazhi.”

rule of law and work to ensure sound lawmaking, strict law enforcement, impartial administration of justice, and the observance of law by everyone.”²⁵ It is precisely Xi Jinping – who is seen by some as an old-style communist hardman – who is assiduously promoting socialist rule of law. The implication is that everyone in China – from the highest officials through citizens to foreigners – is subject to the rule of law.

The impact is being felt in all areas, whether prostitution, corrupt CPC officials, foreigners on improper visas, religion, and so on. The list is long, but let me focus on the revised *Regulation on Religious Affairs*,²⁶ which continues an emphasis already apparent in the 1982 Constitution.²⁷ The regulation may be summarized in article 3: “protecting the legal, stopping the illegal, containing the extreme, resisting infiltration, and combating crimes.”

Protecting the legal (*baohu hefa*): legal religious activities are not only permitted, but also proactively protected by government at all levels. Examples of such activities include the Three-Self Patriotic Movement (TSPM) churches, the 2018 agreement between the Chinese government and Vatican (on both see more below), Islamic institutions, Buddhism and so on.

Stopping the illegal (*zhizhi feifa*): unregistered religious activities are illegal, including “house churches.” Through a complex and diverse history, some “house churches” have developed more conservative evangelical theology, anti-communist assumptions and can be subject to foreign interventions by conservative international Christian bodies. Further, they can see themselves as the only genuine form of Christianity, dismissing organizations such as TSPM and its associated China Christian Council as “compromised” or “heretical.” How is “stopping the illegal” practiced? More directly, unregistered meeting places have been closed down, which has risen to a new level after the revised regulation – at times heavy-handedly. Indirectly and informally, through frequent interaction individual TSPM members often encourage those involved in “house churches” to join registered churches, while TSPM ministers ensure that congregations are not tempted by “house church” claims.²⁸

Containing the extreme (*ezhi jiduan*): the focus is not merely on terrorism in Xinjiang and Tibet (Boer 2019b), but also intolerance among other religious groups (evangelical Christians can be at fault).

Resisting infiltration (*diyu shentou*): no religious organization should be influenced or controlled by an outside body – a consistent feature of anti-colonial sovereignty.

Combatting crimes (*daji fanzui*): if “illegal” includes sins of omission, “crime” designates sins of commission.

By now it should be obvious what “governing the country according to the rule of law” means in relation to religion. However, it is not a Western liberal approach to rule of law,

²⁵Xi, *Secure a Decisive Victory*, 35.

²⁶State Council, *Zongjiao shiwu tiaoli*; see also, State Council, *Zhongguo baozhang zongjiao*.

²⁷Article 36 states:

Citizens of the People’s Republic of China enjoy freedom of religious belief ... The state protects legitimate religious activities. No one may use religion to carry out counter-revolutionary activities or activities that disrupt public order, harm the health of citizens or obstruct the educational systems of the state. No religious affairs may be dominated by any foreign country.

²⁸Anecdotal evidence indicates that the project has – in its first year – already achieved substantial success. At my local church in Haidian, Beijing, there has been a significant influx of members making the move from “house churches.” See more below.

which is framed to protect capitalism and the private individual. Instead, as Chen and Li observe, “socialist rule of law with Chinese characteristics” arises from the fact that China follows the socialist road, which entails Marxist jurisprudence, takes account of China’s concrete conditions, socialist democracy and a socialist market economy.²⁹

The three-self patriotic movement

I have already mentioned the Three-Self Patriotic Movement churches (TSPM), but a few more details are needed. TSPM was established in 1951, working closely with the government – especially Zhou Enlai – after the liberation.³⁰ Today, TSPM has grown to 24 million members and 18 theological colleges, which train in the vicinity of 2000 students per year.³¹ Clearly, it is a large and vibrant Christian Church, if not the largest Protestant Church in the world.³² But if we consider the meaning of “three-self,” we will see its emphasis: self-government, self-support and self-propagation (*zizhi, ziyang, zichuan*). It was to be an autonomous and sovereign church, free from foreign interference (an emphasis already found among foreign missionaries before Liberation). The reason lies in Protestantism’s dubious history: closely connected with European colonialism and the Opium Wars, as well as the internal rupture of the Taiping Heavenly Kingdom, Protestantism was equated with foreign interference, humiliation and chaos. Yet, during the revolutionary civil war and after liberation, there were many Protestants in China, so the question was how they might be represented. The answer was TSPM.

To understand the theological impetus behind TSPM, we need to consider one of its key founders, Wu Yaozong (1893–1979). Wu was one of a number of unique theologians and church leaders who developed a form of Christian communism.³³ In a series of works, he deployed Marxist and theological approaches to core issues.³⁴ The result was an emphasis on revolutionary Christianity, with its communistic life, economic justice, equality and social wellbeing. This is not a feel-good liberal proposal, for it involves “revolutionary love” and hatred of sin. To overcome oppression and exploitation requires class struggle and liberation, after which true reconciliation is possible. Christianity “should be progressive and revolutionary, which truly embodies the spirit of Jesus.” And its mission today is “to transform society where people are treated as slaves and tools into one where the dignity of man is fully upheld.”³⁵

This does not mean that Marxism and Christianity are one and the same, for they approach the same goal from different paths. Materialist communism analyses capitalism

²⁹Chen and Li, “Zhongguo fazhi lilun,” 73.

³⁰The best works on TSPM are the careful studies by Wickeri, *Seeking the Common Ground*; and *Reconstructing Christianity in China*.

³¹The white paper estimates a total of 200 million adherents to all the religions in China: State Council, *Zhongguo baozhang zongjiao*.

³²Accurate numbers of Christian are notoriously difficult to obtain, especially since international mission bodies inflate the number (often to over 100 million) and Chinese government figures are suspected of being too low. However, the most rigorous scientific analysis takes place through the “China Family Panel Studies” project, which is sensitive to distinct approaches to religion in China. Based on 2016 data, it has found that there were 39.69 million Christians in China, of which 28.29 were “open Christians” and 11.67 million “hidden Christians.” Most of the latter group can be assumed to be involved in “house churches.” To be added here are non-practicing “nominal Christians,” who number 21.15 million. See Lu et al., “Zhongguo you duoshao jidutu?”

³³Boer, *Red Theology*.

³⁴Wu, *Shehui fuyin*; “Jidujiao yu zhengzhi”; *Meiyouren kanjianguo shangdi*; and *He’an yu guangming*.

³⁵Wu, *He’an yu guangming*, 17.

and the need for class struggle and revolution, but Christian communism arises from Christian doctrines and the practice of prayer. Although different, they can complement each other. And yet, Wu observes: “I can accept 99% of Marxism-Leninism, but when it comes to the question of whether there is a God or not, I keep my own counsel.”³⁶

In light of TSPM and especially Wu Yaozong’s theology, it is surprising that some articles in his issue (Lap Yan Kung and Li Quan) draw on external theological developments, whether Liberation theology in relation to Hong Kong (a curious move, given Hong Kong’s wealth and influence) or Karl Barth.³⁷ There are distinct resources in the Chinese theological and ecclesial tradition that are potentially more fruitful – especially if we keep in mind that TSPM is highly confessional. On a personal note: in my Beijing neighborhood is a large church, a TSPM parish, with its main church building built with assistance from the local government. I attend one of the morning worship services – in Chinese. The liturgy is formal, the sermon biblical, scholarly and carefully prepared, and vestments are worn by the clergy. The service is always full to overflowing, a reality now even greater due to new members (many of them from “house churches”). The main sanctuary seats about 1,000, while the overflow chapel seats a further 300. Often in the services there is standing room only. Repeat this situation for the seven worship services on a Sunday and you have – even at a conservative estimate – about 6000–7000 worshippers each week. There are also services each weekday, with Bible studies, prayer meetings and classes preparing new members for baptism. The ministerial staff, even at more than 20, are overstretched – a situation repeated across China. Above all, it adheres to the major creeds of the Christian tradition, holds the Bible as the supreme religious authority and fosters the Christian faith and service of its members. This confessional emphasis should be no surprise, given Wu Yaozong’s stress on prayer, belief and the Bible.

The China-Vatican agreement

Another important factor to consider is the significant breakthrough in Vatican-China relations. On 22 September 2018, the Vatican and the Chinese government signed a provisional agreement to solve a centuries-long problem. With a view to uniting the two Roman Catholic Churches in China – one officially registered and the other not (but recognized by Rome) – the Vatican would recognize bishops appointed by the Chinese government, while the government would recognize bishops appointed by the Vatican.

From the Chinese government’s perspective, it should be seen in light of the rule of law and the revised regulation on religion, as also the need for religions to work together for the construction of socialism with Chinese characteristics. From the Vatican’s perspective, the primary motivations are theological and pastoral, with a concern to include all Roman Catholics within the church. My interest is in two statements made from a Roman Catholic perspective.

The first comes from Massimo Faggioli, who explains the historical, pastoral and theological reasons for the China-Vatican agreement. Faggioli writes: “The use of Catholicism

³⁶Quoted in Cao, “Recalling the Later Years,” 139.

³⁷Strangely, Barth’s Christian socialism is underplayed, while the assertion by Li Quan that China is a neo-liberal capitalist state is empirically incorrect and leads to impossible philosophical problems (entailing betrayal narratives, conspiracy theories and coded language). On Barth’s resolute socialism and qualified support of the Soviet Union, see Marquardt, *Theologie und Sozialismus*.

as an ideological surrogate for Western ideologies is not new, but is especially at odds with Pope Francis' vision of Catholicism, and it makes it impossible to understand this important moment in the relations between the Vatican and China."³⁸ Too often has Christianity in its many forms been used as an ideological prop for Western ideologies. The phrasing is crucial, for it indicates that the Church's traditions and theological expressions have a much longer history that sits ill with European liberalism.

All of this leads to the second statement:

Right now, those who are best implementing the social doctrine of the Church are the Chinese ... They seek the common good, subordinating things to the general good ... The dignity of the person is defended ... Liberal thought has liquidated the concept of the common good, not even wanting to take it into account, asserting that it is an empty idea, without any interest. By contrast, the Chinese focus on work and the common good.³⁹

This comes from Bishop Marcelo Sánchez Sorondo, chancellor of the Vatican's Academy of Social Sciences, who was involved in negotiations with the Chinese government. Sorondo's point is clear: socialism with Chinese characteristics focuses on the common good, work and human dignity. By contrast, liberalism has dispensed with any such pretence. All of this brings us back to the question of human rights. Within the increasingly recognized common universal of human rights, I leave it up to the reader to determine whether the Vatican sees – in our current context – the European liberal emphasis or the Chinese Marxist emphasis as more preferable.

Disclosure statement

No potential conflict of interest was reported by the author.

Notes on contributor

Roland Boer is a professor of philosophy at Renmin University of China, Beijing. His current research concerns comparative Marxist philosophy, with a focus on the realities of socialism in power.

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³⁸Faggioli, "China-Vatican Talks." The background to this observation is – in part – a 2016 interview with Pope Francis: "It has been said many times and my response has always been that, if anything, it is the communists who think like Christians. Christ spoke of a society where the poor, the weak and the marginalized have the right to decide. Not demagogues, not Barabbas, but the people, the poor, whether they have faith in a transcendent God or not. It is they who must help to achieve equality and freedom." Francis, "I do not judge."

³⁹Marcelo Sánchez Sorondo, quoted in Álvarez, "Chinos, quienes mejor realizan."

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